IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
Plaintiff,)
v.) Case No. CR-18-227-SLP
)
JOSEPH MALDONADO-PASSAGE,	
Defendant.	<u> </u>

OBJECTION TO RULE 404(b) NOTICE - DOC. 64

Counsel for defendant Joseph Maldonado-Passage, submit the following objection to the government's Notice of Intent to Introduce Rule 404(b) Evidence, Doc. 64, filed March 5, 2019. In the notice, the government advises it will seek to introduce a recorded conversation between Mr. Maldonado-Passage and Individual 2 in which Mr. Maldonado-Passage discusses "the prospect of paying the same undercover FBI agent to commit arson." (Doc. 64 at 2). This evidence fails to meet 404(b)'s requirements.

First, the government's suggested purpose under Rule 404(b) is for "opportunity, intent, plan, and knowledge for using the undercover agent to murder C.B." *Id.* at 3. The purported "victim" of a hypothetical arson was not C.B. The conversation occurred months after the meeting in December of 2018 as alleged in Count 2. Notably, nothing came of this recorded phone conversation regarding arson. These differences render the evidence irrelevant and highly prejudicial under the second and third *Huddleston v. United States*, 485 U.S. 681, 691-92 (1988) factors.

The government's reliance on *United States v. West*, 898 F.2d 1493, 1499 (11th Cir. 1990) is misplaced. The Court in *West* did not admit the comment about the "next hit on the parade" as a prior wrongful act. It was admitted as relevant to the defendant's criminal intent

because the suggestion of a "next" hit presupposes a "first" hit. *Id.* at 1499. The hypothetical arson is not related to the alleged murder for hire. Mr. Maldonado-Passage objects to the introduction of this evidence under any theory proffered by the government. It fails to meet 404(b) and it is irrelevant and highly prejudicial under Rule 403. If the Court admits this evidence, Mr. Maldonado-Passage requests a limiting instruction.

Respectfully submitted,

s/ William P. Earley
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CERTIFICATE OF SERVICE

I hereby certify that on this the 8th day of March, 2019, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic filing to the following ECF registrants: Amanda Green and Charles Brown, Assistant United States Attorneys.

s/ William P. Earley
WILLIAM P. EARLEY